

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

TERRY L. HUTTON,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD72236

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 26, 2011

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Jay A. Daugherty, Judge

JUDGES

Division IV: Hardwick, C.J., and Mitchell and Martin, JJ.

CONCURRING.

ATTORNEYS

Susan E. Summers, Assistant Appellate Defender
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Attorney for Appellant,

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MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

assistance claim, the movant must prove that there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different. *Taylor v. State*, 126 S.W.3d 755, 759 (Mo. banc 2004). Here, Hutton's Rule 29.15 motion does not allege facts that, if proved, would establish prejudice.

Conclusion

Whether post-conviction counsel abandoned Hutton is an issue that was not raised below, and therefore we do not address it on appeal. The proper venue for such a claim is in a motion to reopen the Rule 29.15 case. The motion court did not clearly err in denying the Rule 29.15 motion without a hearing in that the motion did not allege facts that, if proved, would establish prejudice. We therefore affirm the motion court's judgment.

OPINION BY: Karen King Mitchell, Judge

July 26, 2011

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